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TO : Examiner Michael Safavi
Group Art Unit 3673

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FAX NO. : 571 273 8300

NOV 21 2005

FROM : John R. Ley

DATE : November 21, 2005

APPL. NO. : 10/766,623

Attached hereto for filing today is a Second Supplemental Response to Restriction Requirement.

This facsimile transmission will contain 4 pages, including this cover sheet. Please call Connie Palmer or Holly Muncy at (303) 740-9000 if you experience difficulties receiving any portion of this transmission.

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NOV 21 2005

PATENT
Attorney Docket No. 249.305

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Thomas R. Hetzel, Aaron D. Pierce and Steve Maurus
Serial No. : 10/766,623
Filed : January 28, 2004
Title : REINFORCED AND ADJUSTABLE CONTOURED SEAT
CUSHION AND METHOD OF REINFORCING AND
ADJUSTING THE CONTOURED SEAT CUSHION

Group Art Unit : 3673
Confirmation No. : 3753
Examiner : Michael Safavi

SECOND SUPPLEMENTAL RESPONSE
TO RESTRICTION REQUIREMENT

This is a second supplement to the Response to Restriction Requirement filed on or about April 25, 2005, as requested in the most recent office action dated October 21, 2005. Any confusion raised by previous responses is regretted.

The invention to a cushion defined in claims 1-41 has been previously elected for further prosecution. This election is hereby confirmed. A traverse of this restriction requirement has been set forth in the response of April 25, 2005.

The most recent office action, as best understood, appears to clarify or require a designation of one Figure from each of two groups of species: Group I defined by Figs. 1 and 13; and Group II defined by Figs. 17, 19, 20, 22, 23 and 24, and also requires a listing of all claims readable on the designated Figure. In accordance with this requirement, the applicant hereby elects, with traverse, the embodiment shown in Fig. 1 from Group I and Fig. 24 from Group II. Of the initially elected claims 1-41, claims 1-14, 16-27, 30-31 and 36-41 are directed to the embodiment shown in Fig. 1, and claims 4-15, 17-19, 21-25, 27, 32-34 and 38-41 are directed to the functionality shown in Fig. 24.

Reasons for the traverse of this apparent double-species or sub-species election are as follows. Figs. 1 and 13 describe alternate embodiments of the invention. The fact that both figures describe alternate embodiments is clearly described in the

specification. Compare page 10, lines 20-21 with page 11, lines 14-15. See also the paragraph at page 25, lines 3-13. It is therefore possible to make a meaningful election between these two alternative embodiments, and the applicant has done so as set forth above. However, a meaningful election, even if such election can be properly required, is impossible with respect to Group II, because all of the designated Figure drawings in Group II describe the functionality which is applicable to both of the Fig. 1 and Fig. 13 embodiments. The fact that Figs. 17, 19, 20, 22, 23 and 24 are illustrative of the adjustability of both of the embodiments is stated in the specification on page 25, line 11-13 and on page 35, lines 2-5. Therefore, at least the election with respect to Group II is erroneous and misplaced, because all of the Figure drawings noted in Group II apply to both embodiments of the invention designated in Group I.

The undersigned attempted to clarify the restriction requirement today by telephone with the Examiner, but was told to respond to the requirement as stated in order to avoid abandonment of the application. The Examiner said he would consider any traverses or arguments submitted with the response.

It is specifically requested that a citation to the legal authority under which the Examiner has proposed this double species or sub-species election (however it might be characterized), be cited in any decision which continues any of these restriction requirements. The undersigned is aware of legal authority to the effect that species must always be specifically different embodiments, and that the claims restricted to different species must be mutually exclusive. However, no legal authority has been found to support the double species or sub-species election which appears to be asserted and clarified in the most recent office action.


The undersigned is aware of legal authority to the effect that any generic claim found allowable which covers all the species, thereafter requires patentable consideration of all of the species.

The Examiner is encouraged to telephone the undersigned to resolve any issues which would advance the examination of this application.

Respectfully submitted,

Date: 11/21/05

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Certificate of Filing by Facsimile Transmission

The undersigned hereby certifies that the foregoing Second Supplemental Response to Restriction Requirement is being transmitted by facsimile to the United States of Patent and Trademark Office, Group Art Unit 3673, attention Examiner Michael Safavi, at the Central PTO facsimile number 571 273 8300, this 21st day of November, 2005. The Central PTO facsimile number was used for this facsimile transmission because the facsimile number noted in the most recent office action has been disconnected, and a recording obtained when dialing that telephone number (703-872-9306) directs calls to the central PTO voice number 800-786-9199, which is apparently incapable of receiving facsimile transmissions.



John R. Ley